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IN THE
COURT OF APPEALS OF INDIANA

WENDY STAMM,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 21A05-0607-CV-401
	)	
MATTHEW STAMM,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE FAYETTE CIRCUIT COURT
The Honorable Daniel L. Pflum, Judge
Cause No. 21C01-0503-DR-190

June 12, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Wendy Stamm appeals the trial court's Order dissolving the marriage between her and Matthew Stamm, dividing the marital estate, and establishing custody and parenting time for their two children. On appeal, Wendy raises four issues, which we restate as: (1) whether the trial court abused its discretion in granting Wendy primary physical custody of the children, but ordering that Matthew have an amount of parenting time equal to that which Wendy previously enjoyed; (2) whether the trial court abused its discretion in ordering that Wendy and Matthew have joint legal custody of their children; (3) whether the trial court abused its discretion in conditioning its grant of primary physical custody to Wendy on her remaining in Fayette County; and (4) whether sufficient evidence supported the trial court's order that the parties pay $6,746.91 to Matthew's parents. Concluding that the trial court acted within its discretion in establishing the physical custody arrangement and in imposing the condition upon its order of physical custody, we affirm the trial court's order with regard to these issues. However, we conclude that the trial court abused its discretion in ordering joint legal custody, and we reverse the trial court in this respect and remand with instructions to grant sole legal custody to one of the parents. We also conclude that insufficient evidence supports the trial court's finding that the parties owe Matthew's parents $6,746.91, and reverse the trial court's order in this respect.

Facts and Procedural History

Matthew and Wendy were married on June 30, 1990. During this marriage, the parties had two children, G.S., who was born in August 1993, and A.S., who was born in March 1998. In 1996, Wendy gave birth to a still-born child. After their marriage, Matthew and

Wendy lived in Indiana until 1993, in Illinois from 1993-94, and in Pennsylvania from 1994-97. According to both parties, the tragedy of the still-birth in 1996 signaled the decline in their marriage. Wendy felt that Matthew and his family blamed her for the tragedy, as evidenced by comments made to her by Matthew's mother and by the fact that Matthew forced Wendy to pay the related medical expenses out of her personal I.R.A.

Shortly after the still-birth, the parties moved to Delaware, where they lived from 1997-2004. In September 2004, Matthew, who was unemployed, returned to Indiana and moved into his parents' home. A.S. and G.S. moved to Indiana in November, and began attending school in Fayette County. Wendy returned to Indiana in December 2004, at which point the family moved into a home owned by Matthew's grandmother. Apparently, when they left Delaware, Wendy and Matthew had intended to ultimately move to the Indianapolis area. However, Matthew obtained employment in Fayette County at a significantly higher salary than that for a job he had held for a short time in Indianapolis, and decided that it would be better to remain in Fayette County. Wendy testified that in March 2005, after she asked Matthew to sign separation papers, Matthew became extremely upset and choked her. Following this incident, Wendy moved out of Matthew's grandmother's home and rented an apartment in Fayette County.

Shortly after filing her petition for divorce, Wendy obtained a court order that G.S. and A.S. attend counseling sessions, which were conducted by Sheila Marshall, and that the family undergo a custody evaluation, which was conducted by Dr. Bart Ferraro. As a result of his observations during the custody evaluation, Dr. Ferraro recommended that Wendy be awarded sole legal and primary physical custody, and that all Matthew's visitation be

supervised. Dr. Ferraro based this recommendation on his finding that:

> At this time, it is felt that Mr. Stamm's potential to alienate and behave in an emotionally abusive fashion with the children is great. His inability to recognize and alter this leads to the dual recommendation that Mr. Stamm be encouraged if not ordered by the court to choose from the list of experienced therapists provided below in order to pursue a course of intensive psychodynamic individual psychotherapy aimed at addressing and altering aspects of his personality and parental functioning which underlie and negatively impact his capacity to parent the couple's sons in a healthy and emotionally attuned fashion.

Exhibit 1, p. 75.

Wendy and Matthew both testified at trial, predictably giving completely different characterizations of their relationship and of events during their marriage. At trial, Wendy called Dr. Ferraro, Marshall, Kathryn[1] Schlichte, a former teacher of G.S. and A.S., and Kelly Raywalt, a personal friend of Wendy. Matthew called Sue Barth, the principal at G.S. and A.S.'s school. The following relevant findings of fact and conclusions of law entered by the trial court adequately summarize the evidence introduced at trial:

> 10. After the tragedy of giving birth to their still-born daughter in 1996, the parties' marriage began to erode. Wendy Stamm became more withdrawn from the family. Matthew J. Stamm's mood worsened after the death of their daughter and he became more controlling and bullying of Wendy Stamm. . . . Wendy Stamm was required to buy all groceries, children's diapers, formula, clothing, household goods and gasoline for her own vehicle from the sum of $400.00 from the mid-1990's until Wendy Stamm became employed full-time in mid-2004. The parties' relationship worsened and developed into a physically hostile relationship by 2001. Matthew J. Stamm threw wife's glasses and a book out of the vehicle in front of the children when traveling back to Pennsylvania from Indiana after Thanksgiving.
> ***
> 19. [Following their separation] Wendy Stamm believed the parties had an agreement about the time to be spent with the children. Once Matthew J. Stamm learned that Wendy Stamm had filed a Petition for Protective Order,

[1] At different points in the record, Ms. Schlichte's name is spelled "Catherine" and "Kathryn."

Matthew J. Stamm refused to allow Wendy Stamm to see the children for approximately five (5) weeks except on a limited basis.

20. Matthew J. Stamm refused to allow Wendy Stamm to talk to the children on the telephone and she ultimately dropped notes off through the Principal . . . so that the boys would be aware that she had not forgotten them.

21. It was not until May 10, 2005 after a Court Order was Wendy Stamm permitted to see the children regularly.

22. Wendy Stamm testified to repeated incidents since separation in which Matthew J. Stamm has made cruel, disparaging or obscene remarks about her in front of the children. Matthew J. Stamm has spit at Wendy Stamm and called her extremely obscene and disparaging names in front of the children.

23. Matthew J. Stamm is usually ten to fifteen minutes late to the pick-up and drop-off but then will not allow the children out of his vehicle for another five and ten minutes.

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27. Matthew J. Stamm testified that he was very upset about the cost of having an evaluation done with Dr. Ferraro in Indianapolis, as he had been told by his prior counsel that the evaluation would be done in Richmond and would cost only a few hundred dollars.

28. At Matthew J. Stamm's initial meeting with Dr. Ferraro, Matthew J. Stamm insisted on having a fee contract that stated the full cost of the evaluation. Ferraro refused and insisted on a contract that clearly contained a number of contingencies.

29. Matthew J. Stamm's concerns about Ferraro's fees were ultimately confirmed as Ferraro cost the parties in excess of $11,000.

30. Matthew J. Stamm testified that the hostility that developed between himself and Ferraro at their initial meeting continued throughout the evaluation process and [he] did not cooperate fully in the evaluation process.

31. The hostility between Matthew J. Stamm and Ferraro is reflected in Ferraro's recommendations to the Court, which include a recommendation that Matthew J. Stamm's visitation with his children be supervised by a counselor and not include overnights. The Court, therefore, puts very little credibility in Ferraro's recommendations.[2]

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38. Both children expressed concerns to Ferraro during the evaluation that Wendy Stamm hits them and has called the police on them.

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41. Both children expressed to Ferraro their desire to remain living with Matthew Stamm. Curiously, Ferraro believes it would be harmful for these

[2] Although the wording of this finding may so suggest, we do not interpret this finding to mean that the trial court gave little credit to Dr. Ferraro's report merely because it recommended that visitation be supervised. Instead we interpret the finding to explain that the trial court gave the report little credibility because of the hostility between Dr. Ferraro and Matthew.

children to speak with the Court in its chambers regarding their wishes. Ferraro believes that only one with his level of training and education can appropriately handle such a situation.

42. Shelia Marshall described Matthew J. Stamm as operating with rigid distortions of reality and that Wendy Stamm was passive and filled with self-doubt. Matthew J. Stamm has attempted to convince Ms. Marshall that Wendy Stamm had abandoned the children and in fact, had the children telling the counselors the same thing. When challenged, Matthew J. Stamm admitted that there was no abandonment.

43. Ms. Marshall indicated that Matthew J. Stamm had no concern that the children were being disrespectful, dismissive or disregarding of Wendy Stamm. Wendy Stamm was always wrong in Matthew J. Stamm's eyes.

44. Mrs. Marshall stated that Matthew J. Stamm was incapable of containing his own emotions and not allow[ing] them to spill negatively onto the children whether it was destructive or not.

45. Kathryn Schlichte stated that she had problems with Matthew J. Stamm at school. She heard him on multiple occasions make inappropriate comments about Wendy Stamm in front of her and other staff members. Eventually, [G.S.] was referred to the school counselor and the counselor reported to Mrs. Schlichte that she had difficulty working with Matthew J. Stamm because he tried to influence [in] what form and [in] what context the counseling sessions should occur.

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47. Matthew J. Stamm stated that if he were awarded custody of the children then their lives would not be interrupted significantly. They would continue to reside in [Fayette County]. . . .

48. Wendy Stamm stated that she would move the children somewhere toward Indianapolis even though there will be no family in the area. . . . Wendy Stamm did not specify where the children would attend school if she were to be awarded custody, but she gave examples of several schools in the Indianapolis area, which she believes would all be better for the children. . . .

***

Conclusions of Law

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3. In considering the wishes of the children, as expressed in the record, to live with Matthew J. Stamm, with more consideration given to [G.S.] due to his age, the Court believes it is in the best interests of the children to continue to live in Fayette County.

4. The children have already adjusted well to their home, school, and community. It is in the children's best interests to remain in this environment where there is evidence that they have flourished academically, athletically and socially.

***

> 6. The Court did take into account the recommendations made by the custody evaluator, Dr. Bart Ferraro. However, the Court does not follow his recommendations as his conclusions are not supported by all the evidence in this case. The Court takes particular exception to Ferraro's concern over the Court speaking with the children regarding their wishes in this case, when it is the Court that is given the ultimate legal responsibility of deciding the issue of custody and the legislature has directed the Court to consider the wishes of the children.[3]

Appellant's App. at 6-12.

Based on these findings and conclusions, the trial court ordered that Matthew and Wendy have joint legal custody of G.S. and A.S., that the children "shall remain in Fayette County," and that "[s]o long as Wendy Stamm resides in Fayette County the children will reside with her." Id. at 13. The trial court ordered that Matthew "shall have parenting time that at a minimum shall include that which is provided by the Indiana Parenting Time Guidelines and that which Wendy Stamm enjoyed during the 2005-06 school year."[4] Id. at 50. According to the trial court's findings of fact, during this school year, Wendy "parented the children every other weekend and on Tuesday and Thursday evenings. The children arrived at Wendy Stamm's home at 7:30 p.m. on Tuesday and Thursday evenings." Id. at 9. The trial court also ordered that Matthew undergo counseling "for the disorder noted by Sheila Marshall and the effect it is having on the children and shall follow of the recommendations made by the counselor and cooperate in all respects." Id. at 12. Wendy

[3] We note our puzzlement with this finding, as Dr. Ferraro's opinion was clearly in no way binding on the trial court, which is statutorily authorized to conduct such an interview. Ind. Code § 31-17-2-9. The trial court apparently declined to rule on Matthew's Motion For In Camera Interview, as the chronological case summary indicates that the trial court took the motion under advisement, but does not disclose any ruling on the motion. Therefore, the trial court itself, for undisclosed reasons, decided not to interview the children.

[4] The court's original order contained different language, but, on Matthew's motion to correct error, the trial court substituted this language.

now appeals. More facts will be included where necessary.

Discussion and Decision

As a preliminary manner, we feel compelled to address a statement made by Wendy at the conclusion of her appellate brief:

> The Court should note that, interestingly, despite their lack of participation, the trial court referenced [Matthew's] parents as "Bob and Janet" or "Grandma and Grandpa Stamm" on several occasions throughout its findings and judgment. This certainly suggests an informal relationship between the trial court judge and no less than [Matthew's] parents, which [Wendy] submits may well have influenced the court's decisions with regard to these issues now on appeal, especially given the overwhelming and uncontroverted evidence in the record regarding these issues.

Appellant's Brief at 35.

We have three comments regarding this statement. First, we fail to see how referring to Matthew's parents by their first names or by "Grandma and Grandpa Stamm" indicates any sort of bias on the part of the trial court. As many parties in this case share a common last name, using first names or familial position is a reasonable way to identify Matthew's parents and does not demonstrate any sort of improper relationship. We point out that the trial court's Order refers to Matthew by his first name, "father," and "husband," and Wendy by her first name, "mother," and "wife." We see nothing different in the trial court's various methods of referring to Bob and Janet Stamm.

Second, "[m]erely asserting bias and prejudice does not make it so. The law presumes that a judge is unbiased and unprejudiced." Smith v. State, 770 N.E.2d 818, 823 (Ind. 2002). Wendy's statement amounts to nothing more than an unfounded allegation, and we will presume that the trial court in this case was not influenced by any improper motive.

Lastly, a simple examination of Matthew's proposed findings of fact reveals that the trial court's findings referring to Matthew's parents as "Bob and Janet" or "Grandma and Grandpa Stamm" are adopted verbatim from Matthew's proposed findings of fact. Therefore, it is apparent from the record that the trial court's references to Matthew's parents are in no way indicative of an informal relationship as the language originated with Matthew, and not the trial court. We encourage counsel to review the record before making unfounded allegations regarding a trial court's impartiality.

I. Custody

A. Standard of Review

Determinations regarding child custody fall within the trial court's sound discretion. Francies v. Francies, 759 N.E.2d 1106, 1115-16 (Ind. Ct. App. 2001), trans. denied. We will affirm unless we determine that the trial court abused this discretion. Id. In this case, the trial court entered findings of fact and conclusions of law. Therefore, we undertake a two-tiered standard of review: first, we must determine if the evidence supports the findings; and second, we must determine if the findings support the judgment. Orlich v. Orlich, 859 N.E.2d 671, 674 (Ind. Ct. App. 2006). When making these determinations, we will not reweigh the evidence or judge witnesses' credibility. Id. Instead, we will consider only the evidence favorable to the judgment, and will make all reasonable inferences from that evidence. Id. The fact that evidence at trial conflicted will not lead us to conclude that the trial court abused its discretion, and we will not substitute our judgment for that of the trial court. Periquet-Febres v. Febres, 659 N.E.2d 602, 605 (Ind. Ct. App. 1995), trans. denied. It is the appellant's burden to demonstrate that the trial court's findings of fact are clearly

erroneous. Orlich, 859 N.E.2d at 674.

Before addressing the merits, we note that many of the "findings of fact" issued by the trial court in this case are not true findings, as they merely restate the testimony of witnesses. See Augspurger v. Hudson, 802 N.E.2d 503, 515 (Ind. Ct. App. 2004), Sullivan, J., concurring in result (indicating that recitations of witness testimony are not findings); In re Adoption of T.J.F., 798 N.E.2d 867, 874 (Ind. Ct. App. 2003) ("A court or an administrative agency does not find something to be a fact by merely reciting that a witness testified to X, Y, or Z."). This court is fully capable of reading the transcript of witnesses' testimony, and "findings" that merely inform this court that witnesses testified as to certain facts do not aid this court in its review. Cf. Perez v. United States Steel Corp., 426 N.E.2d 29, 33 (Ind. 1981) (indicating that findings that merely restate testimony "are not findings of basic fact in the spirit of the requirement"). Findings of fact are a mechanism by which the trial court completes its functions of weighing the evidence and judging witnesses' credibility. Therefore, "the trier of fact must adopt the testimony of the witness before the 'finding' may be considered a finding of fact." In re T.J.F., 798 N.E.2d at 874. When the trial court enters purported findings that merely restate testimony, this court will not "cloak the trial court recitation in the garb of true factual determinations and specific findings as to those facts." Id. Instead, we treat these purported findings as surplusage. See Perez, 426 N.E.2d at 33.

B. Physical Custody

Wendy argues that the trial court abused its discretion in allowing Matthew a substantial amount of unsupervised parenting time. We agree with Wendy that significant and substantial evidence indicates that Matthew's "influence is harmful to these children and

their relationship with [Wendy]." Appellant's Br. at 25. Indeed, Dr. Ferraro's report is replete with evidence regarding Matthew's harmful treatment of Wendy and expert opinion that his relationship with G.S. and A.S. was harmful to their emotional and social development. Notwithstanding the facts that Dr. Ferraro spent numerous hours with G.S., A.S., Wendy, and Matthew conducting interviews, psychological tests, and parent-child observations, contacted and received information from numerous other sources, and reviewed an extensive collection of documents relevant to the relationship between the parties and their children, the trial court decided to afford little weight to Dr. Ferraro's testimony and not follow his opinion. The trial court was allowed to do so. Clark v. Madden, 725 N.E.2d 100, 109 (Ind. Ct. App. 2000).

We do not have a situation here where the trial court simply ignored the evidence in the report; although the trial court ultimately gave Dr. Ferraro's recommendation and report basically no weight, it addressed its contents, stating:

> But Mr. Stamm, all of these people that Mr. Ferraro talked to can't be wrong. And every one of them, including the ladies that were here in Court, agreed that what they told him was right. And therefore, I would have to go on the assumption that what everyone else told him was right. And if he accurately reflected what everybody told him and it's in his report, then you have what I would consider to be a domineering, authoritatoring, and over powering personality and . . . that's not good for your children, that wasn't good for your marriage. And . . . you may talk about finances might have some bearing and finances always have a bearing, but that over powering personality is probably, it is the reason why you all two spent the last day and a half in here."

Tr. at 215. Thus, the trial court itself acknowledged the substantial evidence of Matthew's detrimental effect on his children.[5] However, the voluminous nature of this evidence does

[5] We also note that the trial court ordered Matthew to undergo counseling.

not alter the fact that it is the trial court's province to weigh the evidence and make factual determinations regarding child custody. Cf. Hemingway v. Sandoe, 676 N.E.2d 368, 370-71 (Ind. Ct. App. 1997) (recognizing that summary judgment is never appropriate in a child custody case, as such a case inherently involves questions of fact, even where mother introduced approximately five volumes of material relating to father's unsuitability as a father, and father's only evidence was an affidavit denying allegations).

We are compelled to conclude that Wendy's argument constitutes a request that we reweigh the evidence. The language used in Wendy's brief demonstrates the nature of her argument when she states: "Other than [Matthew's] obviously partisan testimony, the record is completely devoid of any evidence inconsistent with the finding that [Matthew's] influence is harmful to these children and their relationship with [Wendy]." Appellant's Br. at 25 (emphasis added). Inherent in this statement is an admission that evidence exists to support the trial court's judgment, and that her argument is actually a request to reweigh the evidence and assess the credibility of Matthew's testimony. The rule with regard to this request has been well-established. Our personal feelings with regard to the trial court's assessment of the evidence are irrelevant; with regard to a child custody determination, "we cannot and will not reverse the decision on the basis of conflicting evidence." In re Marriage of Julien, 397 N.E.2d 651, 653 (Ind. Ct. App. 1979); cf. Drane v. State, --- N.E.2d ---, 2007 WL 1532809 at *2 (May 29, 2007) (discussing the standard of review for sufficient evidence in the criminal context and noting that "[a]ccounting for the trial court's role as finder of fact to decide what evidence to credit, the task for us, as an appellate tribunal, is to decide whether the facts favorable to the verdict represent substantial evidence probative of the elements of the

offenses").

We also note that some evidence other than Matthew's testimony supports the award. Namely, both children expressed their desire to live with Matthew, and, as Wendy testified, the children enjoy interacting with Matthew. See Ind. Code § 31-17-2-8 (3), (4)(A) (indicating that the trial court shall consider the children's wishes and the children's interaction and relationship with the parents). Also, the children had been living with Matthew during the school year preceding the hearing, and there was evidence that both children excelled in school. A reasonable inference from this fact is that living with Matthew was not harming their educational development. See Ind. Code § 31-17-2-8 (5)(B) (trial court shall consider children's adjustment to their school).

Even though the evidence introduced in this case would clearly be sufficient to support an order requiring that Matthew's parenting time be more limited and supervised, "we will not substitute our judgment for that of the trial court." Id. Therefore, we are compelled to affirm the trial court's order with regard to custody and parenting time.

C. Joint Legal Custody

The trial court's order granting the parties joint custody, however, is another matter. The award of joint legal custody is governed by Indiana Code section 31-17-2-15, which states:

> In determining whether an award of joint legal custody under section 13 of this chapter would be in the best interest of the child, the court shall consider it a matter of primary, but not determinative, importance that the persons awarded joint custody have agreed to an award of joint legal custody. The court shall also consider:
>
> (1) the fitness and suitability of each of the persons awarded joint custody;

> (2) whether the persons awarded joint custody are willing and able to communicate and cooperate in advancing the child's welfare;
> (3) the wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age; and
> (4) whether the child has established a close and beneficial relationship with both of the persons awarded joint custody;
> (5) whether the persons awarded joint custody:
> (A) live in close proximity to each other; and
> (B) plan to continue to do so; and
> (6) the nature of the physical and emotional environment in the home of each of the persons awarded joint custody.

Therefore, trial courts must consider "whether the parents have the ability to work together for the best interests of their children." Arms v. Arms, 803 N.E.2d 1201, 1210 (Ind. Ct. App. 2004). Although we are reluctant to reverse a trial court's grant of joint legal custody, Walker v. Walker, 539 N.E.2d 509, 512 (Ind. Ct. App. 1989), we will do so when the evidence indicates "a clear abuse of trial court discretion in that the joint custody award constitutes an imposition of an intolerable situation upon two persons who have made child rearing a battleground." Aylward v. Aylward, 592 N.E.2d 1247, 1251 (Ind. Ct. App. 1992).

The fact that both parents may be suitable and capable legal custodians of their children does not make an award of joint custody appropriate. "Even two parents who are exceptional on an individual basis when it comes to raising their children should not be granted, or allowed to maintain, joint legal custody over the children if it has been demonstrated . . . that those parents cannot work and communicate together to raise the children." Carmichael v. Siegel, 754 N.E.2d 619, 636 (Ind. Ct. App. 2001). Indeed, to award joint legal custody to individually capable parents who cannot work together "is tantamount to the proverbial folly of cutting the baby in half in order to effect a fair distribution of the child to competing parents." Aylward, 592 N.E.2d at 1252.

The evidence in this case indicates that Matthew and Wendy have indeed made child-rearing a battleground, and that they are unable to reach agreements regarding fundamental decisions relating to the upbringing of their children. Among other things, after Wendy obtained a protective order against Matthew, he prevented Wendy from seeing G.S. and A.S. for a period of roughly five weeks. During this time period, the only contact Wendy had with her children was through notes that she left at their school for teachers to give to them. Wendy testified as to several other arguments between her and Matthew regarding exchanges with the children during which Matthew called her derogatory names or spit at her. Matthew admits that arguments occurred, but denied spitting at Wendy.

Also, Matthew testified that the parties "certainly" have different opinions about how to raise the children. Tr. at 182. He has previously gone to Child Protective Services with complaints of inappropriate corporal punishment used by Wendy. He also testified regarding an argument that occurred at church where Wendy was upset that the children would not be able to leave with her directly from church because G.S. had not brought his allergy medication from Matthew's home. Matthew's willingness to put the children in the middle of disputes between him and Wendy is apparent from his response to a question as to whether, as Wendy testified, he called her names in front of the children when he was picking them up on Mother's Day; he testified: "No. If I did, the children were right there. Ask the children." Id. at 186.

With regard to the inability of the parties to communicate, Matthew testified that an attempt at dividing up personal property dissolved into an argument and that "[n]o communication during the period that we [were] there [ ] was productive . . . Just a typical

unproductive moment between the two of us." Id. at 185. Wendy also testified that she and Matthew cannot successfully communicate regarding issues with the children, and that they "used to email each other, but then [Matthew] claimed that his email was broken and then we didn't. [G.S.] has been the mediator. Poor [G.S.]. [G.S.] is the one that calls all the time. . . . He's the one, he's twelve years old and he's become an adult in this whole situation." Id. at 148.

Tellingly, neither party was happy with the joint legal custody arrangement implemented by agreement from the commencement of the suit until the trial court issued its custody order, and both parties requested sole legal custody. See Appellee's Appendix at 203, 215; cf. Stutz v. Stutz, 556 N.E.2d 1346, 1351 (Ind. Ct. App. 1990) (considering the success of a temporary joint legal custody arrangement in affirming the trial court's order for joint legal custody). We have previously noted our reluctance to affirm a trial court's order of joint legal custody when one of the parties objects. Aylward, 592 N.E.2d at 1251; see also Ind. Code § 31-17-2-15 ("[T]he court shall consider it a matter of primary, but not determinative, importance that the persons awarded joint custody have agreed to an award of joint legal custody."). The obvious rational for such reluctance is that parties who do not want to work together in making fundamental decisions regarding their children are less likely to successfully reach agreements.

Based on their disagreements regarding their children and their inability to resolve these disagreements between each other, both parties have previously resorted to the judicial system with regard to issues relating to the children. See Nunn v. Nunn, 791 N.E.2d 779, 788 n.4 (Ind. Ct. App. 2003) (recognizing that the existence of a no contact order during the

parties' separation indicated that the parties had a difficult time communicating with each other, thereby "making joint custody an unappealing option at this point"). Matthew and Wendy's relationship is inescapably one for which joint legal custody is inappropriate. Although our conclusion that remand is necessary will result in one of the parents losing his or her rights relating to legal custody, this result is far preferable to the current arrangement, under which two parties who clearly cannot communicate and work together are jointly responsible for making fundamental decisions relating to their children's upbringing. We reverse the trial court's order that Matthew and Wendy share joint legal custody and remand with instructions that the trial court decide which party shall have legal custody.

II. Order Conditioning Physical Custody on Wendy's Remaining in Fayette County

Next, Wendy argues that the trial court abused its discretion by ordering that "[s]o long as Wendy Stamm resides in Fayette County the children will reside with her." Appellant's App. at 13. We must disagree.

"[T]he trial court is given wide discretion in fashioning decrees in dissolution proceedings, and may appropriately choose to place conditions in a custody decree if the conditions serve the best interests of the child." Sebastian v. Sebastian, 524 N.E.2d 29, 33-34 (Ind. Ct. App. 1988). A trial court may permissibly condition a grant of custody on the party remaining in a certain geographic area.[6] Bojrab v. Bojrab, 810 N.E.2d 1008, 1013 (Ind.

[6] We note that at the time the trial court issued its order, the requirement that Wendy remain within Fayette County may have been invalid. See Bojrab v. Bojrab, 786 N.E.2d 713, 731 (Ind. Ct. App. 2003), overruled on other grounds, 810 N.E.2d 1008 (holding that requirement that Wife not move outside of Allen County was invalid as it was more restrictive than the requirements of Indiana Code section 31-17-2-23, which required a party to give notice of a move only when the party moved outside of Indiana or more than 100 miles away from the existing county of residence). However, the day after the trial court issued its order, the former statute regarding the notice requirements was repealed, and the current statute became effective.

2004). We note that here, the trial court's order does not impermissibly indicate that physical custody will automatically revert to Matthew if Wendy moves out of Fayette County. See id. at 1012 (recognizing that such a clause would be inconsistent with Indiana Code section 31-17-2-21, which governs modifications of custody). Instead, were Wendy to move out of Fayette County, in order for Matthew to obtain physical custody, he would need to seek a change of custody pursuant to the custody modification statute, alleging a substantial change in conditions. See id. at 1012-13.

Here, the trial court entered three findings explaining its determination that it was in the children's best interest to remain in Fayette County. The trial court cited the wishes of the children, their adjustment to their home, school, and community, and their relationships with their grandparents, who also live in Fayette County. We recognize that Wendy presented compelling evidence that the schools in the areas to which she is considering moving may provide more opportunities for G.S. and A.S. As explained above, we will not reverse a trial court's decision where the evidence is merely in conflict. The trial court sufficiently explained its reasons for imposing this condition upon its grant of custody. Whether a move out of Fayette County would indeed constitute a "substantial change in circumstances," and render a change in physical custody in the best interest of the children,[7]

This statute requires notice of any move, regardless of distance. Ind. Code § 31-14-13-10 (requiring that if "an individual who has been awarded custody . . . intends to move the individual's residence, the individual must . . . file notice of that intent with the clerk of the court . . . and . . . send a copy of the notice to each nonrelocating individual"). Because this current statute would apply to any move Wendy makes, the trial court's order restricting her movement does not suffer the problems of the restrictions held invalid in Bojrab.

[7] A trial court may not modify a custody order unless it is in the children's best interest and there is a "substantial change in one (1) or more of the factors that the court may consider under [Indiana Code section 31-17-2-8]." Ind. Code § 31-17-2-21. Relocation, by itself, does not inherently constitute a substantial change. See Lamb v. Wenning, 600 N.E.2d 96, 98-99 (Ind. 1992). Instead, "it is the effect of the move upon

is a question that must be decided if Wendy does indeed move, and is one that we neither can nor will address today.

III. Monetary Award to Matthew's Parents

The trial court's valuation of the marital property is committed to the trial court's sound discretion. Hacker v. Hacker, 659 N.E.2d 1104, 1108 (Ind. Ct. App. 1995). On appeal, we will not reweigh the evidence, and will consider all evidence in the light most favorable to the trial court's judgment. Id. We will reverse a trial court's valuation only if we conclude it is "clearly against the logic and effect of the circumstances." Id. We will conclude that the trial court abused its discretion "when there is no evidence in the record supporting its decision to assign a particular value to a martial asset." Thompson v. Thompson, 811 N.E.2d 888, 917 (Ind. Ct. App. 2004), trans. denied.

With regard to the award, the following exchange took place between Matthew and his attorney:

> Q: [U]nder liabilities, $6,746.91, Robert Stamm. Can you explain that to the Court?
> A: I've never been a burden on my family. We moved back here and I asked dad, and Wendy had asked dad, if we could have help in moving out here. Dad said he'd be willing to do that. We indicated that we would make them whole on the expenses that they had. I don't believe that that's anything out of the ordinary.
> Q: And you and your wife discussed that?
> A: We most definitely did discuss that and she accepted that help all during that time. And there shouldn't be a problem with that.
> Q: And what are those expenses?
> A: Well he used his card, traveled to and from Delaware to pick up the children, to watch the children. He and mom, he and mom spent a lot more than that. You know they had hotel bills, they had food, they had things, we're charging mileage back and forth. When they had [G.S.] they had expenses.

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the child that renders a relocation substantial or inconsequential – i.e., against or in line with the child's best interests." Green v. Green, 843 N.E.2d 23, 27 (Ind. Ct. App. 2006).

> When they had me and Wendy and [A.S.] staying with them or at the grandparents, at my grandmother's house, which my mother was the holder of that house, there were plenty of expenses and they just need to be made whole on those expenses.

Tr. at 191-92. Matthew testified that he did not bring any receipts or other documentation because "[he] wasn't asked to bring any." Id. at 208. Wendy testified that she was unaware of any agreement regarding reimbursing Matthew's parents, and that instead, she "thought it was family taking care of family. I had no idea there was going to be a charge in there." Id. at 157. The trial court found that such a conversation regarding repayment had taken place, and that "the evidence has shown that the amount of that debt is $6,746.91." Appellant's App. at 12.

Research has disclosed four cases addressing similar factual scenarios. We will recite the relevant facts of each.

In Thompson, 811 N.E.2d at 916, the wife's testimony included a description of damages to the marital residence and two estimates of the cost of repairs, with the second estimate being $11,000 higher than the first. We concluded that the trial court abused its discretion in deducting $12,000 from the value of the marital residence because the wife "testified regarding items in need of repair, but no estimates of the needed repairs were ever introduced into evidence." Id.

We based our decision in Thompson on Bass v. Bass, 779 N.E.2d 582, 589 (Ind. Ct. App. 2002), trans. denied, in which the wife testified that the home was in need of repairs and "guessed that the estimate was 'something like $8,000.'" We concluded that insufficient evidence supported the trial court's deduction of $8,874 from the value of the marital

residence because "the repairs were never specifically discussed and no estimate was introduced into evidence." Id.

On the other hand, in In re Marriage of Nickels, 834 N.E.2d 1091, 1099-1100 (Ind. Ct. App. 2005), the husband testified that his camper was worth "maybe thirty-five hundred [dollars], it's an 88 model, but it's in good shape." We concluded that this constituted sufficient evidence to support the trial court's valuation of the camper at $3500, stating that the wife's argument of insufficient evidence boiled down to a request to reweigh the evidence. Id. at 1100.

Similarly, in Tebbe v. Tebbe, 815 N.E.2d 180, 185 (Ind. Ct. App. 2004), trans. denied, the wife gave inconsistent testimony regarding the value of her husband's van. However, we concluded that the trial court's valuation of the van at negative $4000 was supported by the wife's testimony that the van had such a value. Id.

We find the situation at hand more analogous to Thompson and Bass, and conclude that the award to Matthew's parents is not supported by sufficient evidence. In Nickels and Tebbe, the evidence introduced was similar to the substance of Matthew's testimony; however, the trial court's valuation in those cases involved a specific, tangible item, and the courts had some sort of explanation as to how a party arrived at a particular value. Here, on the other hand, all we have is Matthew's vague testimony indicating that his parents are being reimbursed for hotel stays, food, mileage, and unidentified expenses associated with staying at his grandmother's home. These expenses are more akin to the unidentified repairs at issue in Thompson and Bass. Without some sort of documentation or more detailed description of his parents' costs, we have no way of determining how Matthew or the trial

court arrived at the figure of $6,746.91, or whether this figure is in anyway an accurate reflection of the costs incurred by Matthew's parents. As in Thompson and Bass, all we have is a party's claim that some sort of unidentified expense exists, and that party's unsubstantiated claim as to the amount of the expense. Such evidence is insufficient to support an award. Therefore, we reverse the trial court's award of $6,746.91 to Matthew's parents.

We recognize that sufficient evidence supports the trial court's finding that Matthew and Wendy agreed to repay Matthew's parents for expenses. However, "the burden of producing evidence as to the value of the marital property squarely . . . belongs on the shoulders of the parties and their attorneys." In re Marriage of Church, 424 N.E.2d 1078, 1082 (Ind. Ct. App. 1981). "[P]arties to a legal proceeding are bound by the evidence they introduce at trial and they are not allowed a second chance if they fail to introduce crucial evidence." Id. Matthew failed to introduce such crucial evidence as to the amount of the debt to his parents. Any amount ordered by the trial court would be speculative, and therefore, insufficient evidence exists to support any monetary award, and we reverse the trial court in this respect.

Conclusion

We conclude that the trial court acted within its discretion with regard to its order on physical custody and condition imposed thereon, but abused its discretion in ordering that Matthew and Wendy have joint legal custody of their children. We further conclude that the evidence did not support the trial court's award of $6,746.91 to Matthew's parents.

Affirmed in part, reversed in part, and remanded.

SULLIVAN, J., and VAIDIK, J., concur.